

Department of Personnel and Administration (DPA)
Misclassification of Workers and COFRS Vendor Holds

The purpose of the Office of the State Controller (OSC) COFRS vendor hold process is to address and resolve possible legal issues when a department or institution of higher education (department) is contracting with a current or past state employee. To prevent misclassification of workers within Colorado state government, the OSC cross references the payroll system (CPPS) and the employee social security number to the COFRS vendor codes. A hold is generated when the vendor code that is a social security number, matches the social security number of a current or past state employee in CPPS. If there is a match, vendor payment is immediately put on hold and a COFRS payment cannot be made at that time.

It is the goal of the OSC and Division of Human Resources (DHR) to work collaboratively and strategically with departments to minimize any possible COFRS vendor holds.

Vendor Tracking

To prevent a hold, OSC and DHR offer two key recommendations; 1) Program managers and procurement staff should be made aware of the hold process, and 2) Vendor tracking – it is important to know who your vendors are and ensure that sole proprietors are actually independent contractors. Ideally, a sole proprietor vendor code should be entered into COFRS *prior* to any work being completed. If necessary, COFRS can then identify the vendor code as problematic and a hold will be placed at that point (prior to the work being completed), rather than after the work is completed and the vendor is awaiting payment. If a hold is created prior to the completion of the work, program managers and procurement staff can work with their department human resources office to address and resolve accordingly *before* the work is to be completed and it is unlikely the OSC or DHR will need to be involved. If a COFRS vendor hold is placed *after* the work has been completed there will likely be delays in processing the payment.

The Hold Process

DHR is notified of a new hold either by the OSC or by the involved department procurement or human resource office. DHR's role is to provide consultation to the OSC and the department in assessing any possible legal implications, while identifying options for resolution. In analyzing a COFRS vendor hold, DHR and the department will review Article 12, Section 13(9) of the Colorado Constitution, the federal Fair Labor Standards Act (FLSA), the Internal Revenue Code for withholding and taxation of wages, and the following state laws and personnel rules.

State Laws:

- *C.R.S. 24-50-501 through 513*
- *C.R.S. 8-72-114*
- *C.R.S. 8-70-115(1)(b)*

State Personnel Rules:

- *Personnel Rule 10-4(f)*
- *Personnel Rule 1-14 (a)*
- *Personnel Rule 3-33*

➤ *Personnel Rule 10-3(e)*

As each COFRS vendor hold may be unique, it is difficult to determine in advance which governance will apply to each situation. DHR will work with the involved department to identify legally defensible solutions and may provide a recommendation regarding a worker's status (employee or independent contractor) directly to the OSC. The OSC will determine if and when a vendor payment may be released.

If a request to release a hold is received, DHR or OSC will likely ask a series of questions to the department prior to the OSC making a determination to pay the worker as an independent contractor or an employee. Please use the newly created, [**COFRS Vendor Hold Employee or Independent Contractor Status Form**](#), to assist DHR and OSC in determining worker status of a past state employee. If the OSC determines that a worker is an employee and the COFRS vendor hold cannot be legally released, then it is likely the department will pay out the individual/employee through regular payroll and not through COFRS. If the employee cannot be paid through COFRS or CPPS, then the appointing authority initiating the procurement may be held liable for payment to the vendor, per Colorado State fiscal rule 7-2.

If a COFRS vendor hold involves a current state employee, program managers and procurement staff must work with human resources, and DPA/DHR when applicable, to address all state and federal employment policies and laws. In most instances where a department is attempting to contract with a current state employee, the procurement or contract likely will not be allowed to continue and a dual employment agreement will be created instead.

Resources

Misclassification of Workers: *The Advisor*, February 2011 edition available at <http://www.colorado.gov/dpa/dhr/advisor>

Independent Contractor or Employee – COFRS Holds website:

<http://www.colorado.gov/dpa/dfp/sco/IndependentContractor/independentcontractor.htm>

Technical Guides for Contracts and Independent Contractors:
<http://www.colorado.gov/dpa/dhr/techguides>

Contacts

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